

IN THE COURT OF APPEALS OF IOWA

No. 0-588 / 10-0337
Filed September 9, 2010

**IN THE MATTER OF THE ESTATE OF
BESSIE M. LECLERE, Deceased,**
Appellee,

vs.

JAMES LECLERE,
Defendant-Appellant.

Appeal from the Iowa District Court for Delaware County, Lawrence H.
Fautsch, Judge.

James LeClere appeals from the district court ruling denying him
reimbursement for the costs of a land survey, which he paid to have completed
for his mother's property. **AFFIRMED.**

Gary F. McClintock of McClintock Law Office, Independence, for
appellant.

Francis J. Lange of Lange & Neuwoehner, Dubuque, for appellee-estate.

E. Michael Carr and John M. Carr of Carr & Carr Attorneys, Manchester,
for appellee.

Considered by Sackett, C.J., Vaitheswaran and Tabor, JJ.

TABOR, J.

In this case we are called upon to decide whether the testator's son is entitled to reimbursement from his mother's estate for the cost of a land survey he commissioned more than three years before her death. Because James LeClere did not prove that the \$4075 he paid for the survey was a valid claim against the estate, we affirm the district court's denial of his request.

I. Background Facts and Proceedings.

In 2004, James LeClere hired a land surveying firm to determine the boundaries of approximately 220 acres in rural Hopkinton, Iowa, owned by his mother, Bessie LeClere. James alleges that he consulted with his brother Eugene LeClere, who was then Bessie's power of attorney, about the need to settle a dispute with one of Bessie's neighbors about a parcel of ground. James recalled Eugene saying Bessie did not have funds available to pay for the survey, so James agreed to hire the surveyors. He gave the firm a retainer of \$2500 and paid the remaining \$1575 in surveying and recording fees on May 1, 2004.

Bessie died on May 29, 2007, at the age of ninety-three, leaving five sons and three daughters as heirs. Bessie's will was admitted to probate. The probate proceedings proved to be contentious. James petitioned for a deed to a ten-acre tract of property he allegedly purchased from his parents in 1971. The district court determined James could not enforce an alleged oral contract for the property and denied his petition for a deed. Other siblings pursued a separate will contest, which is not the subject of this appeal. After settlement of the will

contest, on May 23, 2008, Bessie's land was sold in three parcels at public auction for a total purchase price of \$775,882.

On October 15, 2009, executor Charlene Goodreau applied for an order approving payment of the costs of the 2004 land survey to her brother James LeClere. The executor asserted:

Because those Plats of Survey were recorded in the records of the Delaware County Recorder, they provided a comprehensive legal description of the farmland that was the major asset of this Decedent's estate, and very much assisted this Executor, a Delaware County abstractor, and . . . the auctioneer, to market, auction and close the sales of that farmland in three parcels, for their fair market values as set out in the Report of Sale filed in this case.

On October 23, 2009, three of Bessie's other children—Ronald LeClere, Eugene LeClere, and Eula Svehla¹—objected to paying the survey costs “voluntarily incurred” by their brother James “long before the death” of their mother. The objection asserted the claim for the survey and recording fees was barred by the statute of limitations at Iowa Code section 633.410 (2009). The objectors also attacked the substance of the claim, arguing: “The survey was undertaken by James LeClere for his own personal reasons having nothing to do with the estate.”

Charlene responded to the objectors by noting that Iowa Code section 633.411 provided the personal representative of the estate with the discretion whether to plead the statute of limitations to bar James's claim for the survey costs. She indicated her willingness to waive any applicable limitation because she believed it was equitable to reimburse James for that expense. On

¹ A fourth sibling, Berneice Friest, filed a separate written objection to the payment for the survey costs incurred by James.

November 23, 2009, James filed a formal claim in probate, seeking reimbursement for the \$4075 he paid for the land survey in 2004. On that same day, the district court heard arguments by counsel for claimant James LeClere, executor Charlene Goodreau, and the objectors.

On January 4, 2010, the district court declined to allow the estate to pay the survey fees, concluding: “The claim of James LeClere is based on the cost of a survey performed several years prior to the death of the decedent and was undertaken by James LeClere for his personal benefit rather than the benefit of the Estate.” James appeals that decision. The estate joins James in contesting the district court’s denial. The objectors ask us to affirm the district court.

II. Discussion.

We review probate proceedings concerning contested claims for correction of legal errors. Iowa Code § 633.33; *In re Estate of Buss*, 577 N.W.2d 860, 861 (Iowa Ct. App. 1998). In this case, we examine whether the district court properly denied James’s claim for reimbursement of the costs of a land survey completed more than three years before his mother’s death. Because our decision hinges on the interpretation of provisions in our probate code, we are not bound by the district court’s legal conclusions. See *In re Estate of Thomann*, 649 N.W.2d 1, 4 (Iowa 2002).

As a threshold matter, the objectors contend James’s claim is barred by the statute of limitations in Iowa Code section 633.410. Section 633.410 bars claims not filed within four months after the date of second publication of the notice to creditors or one month after service to each claimant whose identity is

readily ascertainable. The objectors allege that James filed his claim more than fifteen months after the second publication.

James and the estate counter that Charlene appropriately exercised her discretion to waive the statute of limitations claim under Iowa Code section 633.411. That section provides: “It shall be within the discretion of the personal representative to determine whether or not the applicable statute of limitations shall be pleaded to bar a claim which the personal representative believes to be just” Iowa Code § 633.411. Our supreme court interpreted section 633.411 as prohibiting the beneficiaries from pleading the statute of limitations to bar a claim where the personal representative did not exercise his or her discretion to do so. *In re McCabe’s Estate*, 258 Iowa 706, 709, 140 N.W.2d 370, 371 (Iowa 1966) (“If the beneficiaries were allowed to plead the statute, such action would be in direct conflict with section 411 which vests the personal representative with this discretion.”). Although the issue was not presented in *McCabe’s Estate*, the court cautioned that the personal representative’s discretion to waive the statute of limitations was not absolute and “may be subject to abuse.” *Id.*; see Sheldon F. Kurtz, *Kurtz on Iowa Estates* § 13.18, at 528-29 (3d ed. 1995) (noting the court “left open to future decision the validity of the distributees’ right to challenge the personal representative’s exercise of discretionary authority to plead the non-claims statute because of any abuse of discretion”).

The objectors seize on this language from *McCabe’s Estate* and argue that Charlene abused her discretion in waiving the statute of limitations. They allege that James and Charlene acted “in collusion” and that Charlene showed

“favoritism” toward her brother James in seeking court approval to pay the stale claim. The objectors did not present any evidence in the district court to support these harsh attacks on the executor. In *McCabe’s Estate*, the court found section 633.411 gave the personal representative the right to use his or her “individual judgment” to determine whether to interpose the statutory time bar. *McCabe’s Estate*, 258 Iowa at 709, 140 N.W.2d at 371. If the personal representative refuses to invoke the statutory time bar based on a good faith belief that it would be just to pay the claim, section 633.411 precludes the invocation of the statute of limitations by beneficiaries objecting to the claim. In her application to pay the costs of the survey, Charlene expressed her belief that the “comprehensive legal description of the farmland” assisted the estate in selling the property. The trial court record does not support the objectors’ allegation that Charlene acted in bad faith in not pleading the statute of limitations.

While we reject the contention James’s claim is time barred under section 633.410, that does not end our inquiry. On the substance of the matter, we agree with the district court’s conclusion that the survey cost was not a valid claim against Bessie’s estate. To be considered an allowable claim, the amount sought from the estate must be “justly due.” See Iowa Code § 633.418. James did not present any evidence that Bessie or her power of attorney agreed to reimburse him for the costs of the survey. Without any proof that Bessie incurred the cost of the survey as a debt, James is not entitled to recover what he voluntarily paid the surveyors. See *Soderland v. Graeber*, 190 Iowa 765, 768,

180 N.W. 745, 746 (1921) (claimant-son seeking payment from estate for services performed for his mother before her death must establish expectation by both parties that compensation should be paid).

The district court concluded the survey was a “personal benefit” to James related to his attempt to obtain a deed for ten acres of property he allegedly purchased from his parents in 1971. We do not see a direct connection between the survey and James’s unsuccessful petition for a deed to those ten acres. But that is not to say the survey can necessarily be considered a benefit to the estate. James argues on appeal that without the survey in place there would have been a boundary line dispute that would have required resolution as part of the probate proceedings before the property sale, resulting in the same cost to the estate as is now at issue. We find this argument speculative. No evidence was offered concerning the extent of the alleged boundary dispute or the usefulness of the updated plat recording obtained in 2004. We cannot say on this record that the sale could not have been accomplished without the survey.

Although the parties do not direct us to any provision of the probate code that would guide our substantive analysis of James’s claim for reimbursement of the survey costs, we find it prudent to consider the applicability of section 633.102. That provision states:

In connection with the sale, mortgage, lease, pledge or exchange of property, the court may authorize the fiduciary to pay, out of the proceeds realized therefrom or out of other funds of the estate, the customary and reasonable auctioneers’ and brokers’ fees and any necessary expenses for abstracting, survey, revenue stamps, and other necessary costs and expenses in connection therewith.

Iowa Code § 633.102. The question arises whether the survey cost incurred by James well in advance of Bessie's death was a "necessary expense" in connection with the sale of the estate property. We do not believe this provision required the district court to authorize payment of James's out-of-pocket expenditure for the 2004 survey as a necessary cost of selling Bessie's land at auction in 2008. The span of years between the survey and the sale leaves a large question whether James's expenditure constituted a necessary expense on behalf of the estate.

For whatever reason—either a personal desire to purchase some of his mother's land or an altruistic aim to help his family settle property line disputes—James chose to pay for the survey himself and documented no expectation that he be repaid by his mother. James does not identify any provision in the probate code that would now allow him to recover this cost from the estate. We affirm the district court's order denying James's claim for payment from Bessie's estate in the amount of \$4075 as reimbursement for the cost of a land survey.

AFFIRMED.

Vaitheswaran, J., concurs; Sackett, C.J., concurs specially.

SACKETT, C.J. (concur specially)

I concur specially. I too would affirm. I agree with the majority that because the executor did not plead the statute of limitations the claim was not time barred. I believe the evidence is clear that the survey benefitted the estate. The decedent's land was sold in parcels and the survey obviously assisted in locating the boundaries and describing the property sold. However, I agree with the majority that there was no agreement by the decedent to reimburse James for the survey and for this reason I too affirm.